

U.S. DISTRICT COURT  
FOR DISTRICT OF MASSACHUSETTS  
ONE U.S. COURT HOUSE  
COURTHOUSE WAY, BOSTON MA 02110

Ramon W. ABREU  
PLYMOUTH CORRECTIONAL FACILITY  
26 LONG POND ROAD  
PLYMOUTH MA 02360

FILE NO: A36557748  
IN THE MATTER OF  
RAMON W. ABREU

U.S. DISTRICT COURT  
FOR DISTRICT OF MASS

PETITION FOR A WRIT OF HABEAS CORPUS :

RESPONDENT IN REMOVAL PROCEEDING  
MOTION TO REOPEN AND RECONSIDER REMOVAL PROCEEDING

AS PENDING 1. STATE RE-LITIGATION CASE TO EXPUNGE OR DISMISS.

HENCE ALIEN QUALIFIES FOR 212 (C) 8-U.S.C. 1182 (C) WAIVER.

Now COMES THE RESPONDENT Ramon W. Abreu Cabrera PROSE IN THE ABOVE ENTITLED  
MATTERS AND RESPECTFULLY MOVE TO THE U.S. DISTRICT COURT TO REOPEN AND RECONSIDER -  
REMOVAL PROCEEDING. PURSUANT TO 8.C.F.R. § 1003.2 ON THE GROUNDS SET BELOW

RESPONDENT IS NATIVE AND CITIZEN OF THE DOMINICAN REPUBLIC. WHO WAS BORN  
ON AUGUST 18, 1963. ENTERED THE UNITED STATES OF AMERICA ON OCTOBER 1<sup>ST</sup> 1978.  
FROM SAN JUAN PUERTO RICO AS AN IMMIGRANT RESIDENT IN THE UNITED STATES OF  
AMERICA.

(1)

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STATEMENT OF CASE

ALIEN ATTORNEY IS PETITIONING TO ATTACK, CORRECT TO EXPUNGE  
OR DISMISS ALIENS 2. STATE PRIORS.

1) SENTENCE 9-15-1988, SUFFOLK SUPERIOR COURT BOSTON MA, FOR  
ALLEGED DISTRIBUTION OF HALF ( $\frac{1}{2}$ ) GRAMS OF COCAINE. CASE  
NO. 060674, SENTENCE TO SERVE 90 DAYS BALANCE SUSPENDED  
OF 9 MONTHS.

2) SENTENCE 7-20-1990 DOCKET NO: 9007 CR 3581, AT THE DISTRICT  
COURT OF DORCHESTER BOSTON MASS FOR ASSAULT AND BATTERY  
AND MISCONSTRUED TO INTEND TO COMMIT A CRIME SENTENCE  
TO 6 MONTHS BALANCE OF 2. YEAR SUSPENDED, ALIEN IS  
INDIGENT AND DEPENDS UPON FAMILY SUPPORT TO FILE FOR  
RELIEF ALIEN HAS AN ATTORNEY APPOINTMENT OF COUNSEL TO  
HELP OUR LEGAL NEEDS. MY COUNSEL IS ATTORNEY AT LAW,  
KATHLEEN M. McCARTHY, 160, STATE STREET 8<sup>th</sup> FLOOR BOSTON  
MASSACHUSETTS, 02109 (TELEPHONE # (978) 975-8060.

1) PRIOR ONE: COUNSEL WILL PRESENT TO THIS COURT THE PETITION TO DISMISS  
OR CORRECT HALF ( $\frac{1}{2}$ ) GRAM DISTRIBUTION, TO PERSONAL USE.

2) PRIOR TWO: COUNSEL WILL SEND COPY OF END PRIOR ASSAULT AND BATTERY  
INTEND TO COMMIT A CRIME 6 MONTHS SENTENCE MOTION TO DISMISS UPON  
DOUBLE JEOPARDY, HENCE ALIEN MAY HAVE NO PRIOR FOR DEPORTATION  
IN'S ACT WAS EXCLUDABLE AND ALIENS WHO HAVE BEEN ARRESTED  
AND RE-ENTERED CAN RE-APPLY FOR SECT 212(A)(6)(B)(1) BECAUSE OF THE  
1990 NEW LAWS ALIEN CAN QUALIFY FOR WAIVER OF DEPORTATION.

~~STATEMENTS OF FACTS~~  
Aliens Prior 7.20.90 Arrest for distribution of cocaine A Half ( $\frac{1}{2}$ ) GRAMS  
Receive A 90 DAY SENTENCE AND BALANCE SUSPENDED ALIEN PLEASE SORRY  
BECAUSE INEFFICIENT COUNSEL FAILED TO ARGUE HALF ( $\frac{1}{2}$ ) GRAM COCAINE  
WAS MORE PERSONAL USE. COUNSEL PRESENTLY IS FILING TO CORRECT THE  
ERROR, MR. ABREU WAS ARRESTED BY TWO BOSTON POLICE OFFICERS, NAME  
(SEEMAN GRIFFITH) AND (CARLOS LUNAS). THESE POLICE OFFICERS WERE FOUND  
CORRUPT AT BOSTON SUPERIOR COURT, ALSO SEE M.G.L. 51, 52, 53, 54, 56, 57,  
AND MANY MORE CASES ALSO SEE SUPERIOR COURT OF MASS. V. ELBERT LEWIN  
1988 SUPERIOR COURT MADE A STATEMENT ISSUE THE ALL THESE CASES  
AND ARREST BY THIS OFFICER SHOULD BE THROWN OUT OF THE COURT SYSTEM  
MR. ABREU SHOULD NEVER BEEN DEPORTED AND THE FIRST PLACE.

ALIEN ABREU 5-7-1990 ARREST OF ASSAULT AND BATTERY AND INTENT TO  
COMMIT A CRIME ARE RESIDENTS THE SERIOUSNESS AS REFLECTED UPON  
THE 6 MONTHS SENTENCE BALANCE SUSPENDED FOR ABREU WAS  
THE FIRST INTENDED VICTIM OF A PLANNED COORDINATED ROBBERY  
ABREU HAD A CHILDREN'S BIRTHDAY PARTY AND THE ROBBERS JOSE,  
NANCY AND 3<sup>RD</sup> ESCAPEE NAME TOLSON PLANNED TO ROB ABREU  
WHILE ALIEN WAS ENTERTAINING THE BIRTHDAY PARTY OF ALL  
10, SMALL CHILDREN AGES 7 TO 10, AND 13, ABREU SAW THE  
THIRD ROBBER FRIEND OF JOSE, NANCY RUN OUT OF THE HOUSE  
CARRYING A GUN ABREU IN FRONT OF THE CHILDREN, ABREU  
COULD NOT ATTACK OR ATTEMPT TO STOP THE ROBBER FOR THE  
CHILDREN MAY GET HURT SINCE THE ROBBER WAS BANISHING A  
GUN, ABREU HAD TO LET THE ROBBER LEAVE FOR THE SAFETY OF THE  
CHILDREN BECAUSE THE ROBBER WASN'T INVITED AND A FRIEND OF  
JOSE AND NANCY AND BECAUSE THE JEWELRY A SAINT CHARLES  
PIECE WAS PART FROM HIS FAMILY.

(4)

17. YEARS AGO, \$24,000 of my FATHERS AND MOTHERS JEWELRY  
 ABREU, DETAINED JOSE AND NANCY TO MAKE ATTEMPTS TO,  
 1) RECOVER HIS FAMILY LONG TIME JEWELRY  
 2) BECAUSE THE PARTY WAS FULL OF SMALL CHILDREN AND  
 3) JOSE WAS CARRYING A 22. CALIBER GUN ABREU HAD TO TAKE  
 JOSE AND NANCY TO HIS SISTERS APARTMENT AWAY FROM THE  
 CHILDREN, RATHER THAN CALL THE POLICE ABREU'S MISTAKE WAS  
 THE HE TRIED TO MAKE JOSE PAY BACK FOR THE JEWELRY.  
 JOSE AND NANCY AND THIRD PARTY CONSPIRED TO ROB ABREU  
 FOR BECAUSE OF ALL THE EXTRANAUTING EXTRAORDINARY CIRCUMSTANCE  
 ABREU WAS GIVEN A VERY LIGHT SENTENCE OF 6 MONTHS FOR BEING AN  
 ANGRY VICTIM OF ROBBERY AND BY ANGER TOOK MATTERS IN HIS OWN  
 HANDS BECAUSE OF A LONG TIME FAMILY JEWELRY PIECE, THE JEWELRY  
 IS NOT JUST A REGULAR JEWELRY PIECE (ATM AMERICANS ARE  
 VERY RELIGIOUS AND THIS PIECE IS A CRAFTED PIECE OF SAINT LAZARUS  
 SORT OF GOOD LUCK PIECE FOR GOD SAVED LAZARUS AND PROTECTED HIM  
 IN WHERE OPPRESSORS WERE SENT TO THE DEVIL TO BURN IN HELL.  
 SO ABREU HAD TWO SENTIMENTAL REASONS OF VALUE HE DID NOT WANT TO  
 LOSE THE PIECE ABREU PRAYS THE I.N.S COURT CONSIDERS THE  
 MITIGATING CIRCUMSTANCE AS STATE ABOVE SEE 18. U.S.C. 3661 USE  
 OF INFORMATION FOR SENTENCING NO LIMITATION PLACED ON BACKGROUND  
 CHARACTER AND CONDUCT TO CONVICT A PERSON U.S.C 5K2.0  
 DOWNWARD DEPARTURES FROM SENTENCING GUIDELINES FOR EXTRANAUTING  
 AND MITIGATING EXTRAORDINARY CIRCUMSTANCE SHOULD BE CONSIDERED  
U.S.V.BROWN 985 F.2D 978 (10TH CIR 1993) USSC 18.14 DOWNWARD  
 DEPARTURES ALLOWED UPON OVER REPRESENTS SERIOUSNESS OF  
 BACKGROUND.

## ARGUMENT OF ISSUES

ISSUE I Re-Apply for WAIVER of DEPORTATION THOMAS V. INS 35 f. 3D 1332 (9<sup>th</sup> Cir. 1994) CASE CAN BE RE-OPENED which was ARBITRARY close hearing base upon NEW EQUITIES OF CHANCE. ON NEW LAW SUBSEQUENT TO PAST BIA DECISION PENDING RELIEF from DEPORTATION SALTOIMA V. I.N.S. 9F. 3432 (6<sup>th</sup> Cir. 1993) U.S V. YACOVIAN 24 f. 3D 1 (9<sup>th</sup> Cir 1994) Rozel, 954 f. 2D AT 335 THE NEW I.N.S. 1990 ACT APPLIES TO ALIEN ASKED FOR RELIEF OF 212 (C) FOR SENTENCE IMPOSE UNDER 5 YEAR SENTENCE. U.S. V. SMITH 36 f. 3D 328 (1<sup>st</sup> Cir 1994) ALIEN RE-ENTERING THE U.S. AFTER DEPORTATION MAY COLLATERALLY ATTACK DEPORTATION IF HE OR SHE CAN SHOW DEPRIVATION OF OPPORTUNITY FOR MEANINGFUL JUDICIAL REVIEW OF THE DEPORTATION ORDER I.N.S ACT. 276, 8 U.S.C 1324. ALIEN ASKED'S ATTORNEY KATHLEEN M. McCARTHY ~~EX-9~~. IS ATTACKING BOTH 2 STATE PRIOR 1) FOR MORE PERSONAL USE AND 2) FOR DOUBLE JEOPARDY HENCE ALIEN MAY HAVE NO PRIOR FOR DEPORTATION.

## ISSUE II INEFFECTIVE OF COUNSEL

CABRAL AGUILA V. INS 589 f. 2D 957 (9<sup>th</sup> Cir 1978) INEFFECTIVE ASSISTANCE OF COUNSEL ADVISED ASKED TO PLEA TO DISTRIBUTION OF HALF GRAM OF COCAINE YET ALIEN NEVER SOLD ANY COCAINE HE PLEA UPON ATTORNEY INCORRECT ADVISE AND SHOULD HAVE PLEA TO PERSONAL USE WHICH NEW ATTORNEY IS CORRECTING THIS PLEA AND HOPE TO BE CORRECTED WITHIN A FEW MONTHS. ALIEN WOULD NOT HAVE BEEN DEPORTED THE FIRST TIME IF EFFECTIVE COUNSEL PROPERLY ARGUED HALF GRAM FOR PERSONAL USE AND NOT TO DISTRIBUTION TO PLEA JUST FOR CONVENIENCE.

Issue III UNDER 5 YEAR NON DEPORTABLE

ALIEN AGREE QUALIFIES FOR NON DEPORTATION FOR HIS PRIOR SENTENCE WERE UNDER 5 YEARS SENTENCE. IN GORDON, GORDON. 16.03<sup>(A)</sup> SECTION 212 A (III) FOR CONSPIRACY, THE SECTION ALSO RENDERS EXCLUDABLE ALIENS WHO HAVE BEEN CONVICTED OF TWO OR MORE OFFENSES REGARDLESS OF WHETHER SUCH OFFENSES INVOLVE MORAL TURPITUDE FOR WHICH THE AGGREGATE SENTENCES TO CONFINEMENT ACTUALLY IMPOSED WERE 5 YEAR OR MORE. PALMER V. I.N.S 4 F.3D 482, 1993 HARSH ID 438, 439, 241 (A)(1) RESIDENTIAL TO 8. U.S.C. 1251 (A)(1) 212 (A)(16) RESIGNED TO 8 U.S.C. 1182 (A)(6)(A) EXCEPTIONS 1182 (A)(3)(C) 1182 (A)(3)(C)(1) CLASS I (I) 3. 1182 (3) MULTIPLE CRIMINAL CONVICTION ANY ALIEN CONVICTED OF 2 OR MORE OFFENSES OTHER THAN PURELY POLITICAL OFFENSE REGARDLESS OF WHETHER THE OFFENSE INVOLVED MORAL TURPITUDE FOR WHICH THE AGGRAVATED SENTENCES TO CONFINEMENT ACTUALLY IMPOSED WERE 5. YEAR OR MORE IS EXCLUDABLE IN RODRIGUEZ V. I.N.S 994 F.2D 32 (1<sup>ST</sup> CIR 1993)(2) ALIENS 47, 53, 10 (3) DEPORTABLE ALIEN WAS NOT EXCLUDABLE UNDER PROVISION AND NATIONAL ACT. WHICH EXCLUDABLE ALIENS WHO HAVE BEEN CONVICTED OF 2 OR MORE OFFENSES FOR WHICH AGGREGATE SENTENCES TO CONFINEMENT ACTUALLY IMPOSED WERE 5 YEARS OR MORE. I.N.S ACT. 212 (A)(2)(A)(2)(B) 24- (A)(2)(C) AMENDED 8. U.S.C 1182 (A)(2)(A)(2)(B) 1251, OF MORE OFFENSE FOR WHICH THE AGGREGATE SENTENCES TO CONFINEMENT ACTUALLY IMPOSED WERE 5 YEARS OR MORE I.N.A. 212 (A)(B) 8. USC (A)(2)(B) ID 34 MATTER OF J. 569 (B.I.A. 1955) THE 1992 LANGUAGE AS HAVING ACTUALLY IMPOSED A SENTENCE TO CONFINEMENT IMPOSED WAS LESS 5. YEARS EQUAL 1826 DAYS IN RODRIGUEZ HIS CONFINEMENT WAS LESS THAN 1826 DAYS UNDER 5. YEARS THE RODRIGUEZ WAS BACATED AND REMANDED.

IN. YEPESPRADO V. U.S.I.N.S 10 f 3D 1363 (9<sup>th</sup> CIR 1993)

ID 1371. CONGRESS COULD HAVE DECIDED TO DENY DISCRETIONARY RELIEF TO ALL PERSON CONVICTED OF SERIOUS DRUG OFFENSES BUT EXPLICITLY PROVIDE THE 212(c) RELIEF WILL REMAIN APPLICABLE TO PERSONS SUCH AS YEPESPRADO WHO HAVE SERVED LESS THAN 5 YEAR IMPRISONMENT ON ACCOUNT OF A NARCOTICS CONVICTION.

ISSUE IV

7 YEARS RESIDENCE

ALIEN ALREADY QUALIFIES FOR 7 YEAR DOMICILE BARELA-BLANCO V. I.N.S 18 f 3D 584 (3<sup>rd</sup> CIR 1994) ID (4) IN EXAMINING FAVORABLE FACTORS 7 YEARS QUALIFY FOR 212(c) WAIVER. SEE ESPINOSA V. I.N.S. 991 f. 2D 1994 (7<sup>th</sup> CIR 1993) WHICH U. UNITED STATE I.N.S. 4 f 3D 306 (4<sup>th</sup> CIR 1993) ID 308 ACCORDING TO 8. U.S.C S 1182 (c), 212(c) ALLOWS ANY ALIEN LAWFULLY ADMITED FOR PERMANENT RESIDENCE YET FACING DEPORTATION TO APPLY FOR DISCRETIONARY RELIEF UPON COMPLETION OF A LAWFULLY UNRELINQUISHED DOMICILE OF 7.

CONSECUTIVE YEARS IN CIACIARDO V. I.N.S 1's f 3D 584 (8<sup>th</sup> CIR 1994) 2 ALIENS 535 CARD OF IMMIGRATION APPEAL SHOULD HAVE LOOKED BACK OF GOOD MORAL CHARACTER REQUIRED FOR SUCH RELIEF. I.N.S. ACT 101(f)(7) AMENDMENT 1101 (F)(7)(2) TO OBTAIN RELIEF AND APPLICANT MUST ESTABLISH 7. YEARS OF CONTINUOUS PHYSICAL PRESENCE, GOOD MORAL CHARACTER AND SEVERE HARDSHIP IF DEPORTATION OCCURS. IN LEPE GUIDON V. I.N.S 16 f.3D 1021 (9<sup>th</sup> CIR 1994) ID 1203 DEPORTABLE ALIENS WHO ARE PERMANENT RESIDENTS AND WHO HAVE ACQUIRED SEVEN YEAR OF LAWFULLY UNRELINQUISHED DOMICILE IN THE U.S.

ARE ELIGIBLE FOR DISCRETIONARY WAIVER OF DEPORTATION THE PROVISION WAS ENACTED TO ALIVIATE THE HARSHSHIP EFFECTS OF DEPORTATION OF THOSE ALIENS WHO HAVE CAREFULLY ESTABLISHED SUBSTANTIAL TIES TO THE UNITED STATES 8.U.S.C 1182 (C), 1182 (C) RELIEF REGARDLESS OF WHEN THEY WERE ADMITTED FOR PERMANENT RESIDENCE 212 (C) WAS JUST HUMANE GOAL OF PROVIDING RELIEF TO THOSE FOR WHOM DEPORTATION WOULD PRESENT IN PECULIAR OR UNUSUAL HARSHSHIP. 212 (C) WAS ANTED TO PROVIDE RELIEF FROM DEPORTATION FOR THOSE WHO HAVE CAREFULLY FORMED STRONG TIES TO THE UNITED STATES, CHILDREN NATURALLY FORM THE STRONGEST OF TIES TO THE PLACE WHERE THEIR PARENTS ARE DOMICILED, IN FRANCIS V. I.N.S 532 F.2D 268 (2ND CIR 1976) FUNDAMENTAL FAIRNESS DICTATES THE PERMANENT RESIDENT ALIEN WHO ARE IN THE CIRCUMSTANCES BUT FOR IRRELEVANT AND FORTUITOUS FACTORS BE TREATED IN A LIKE MANNER. I.N.S 212 (C) U.S.C.A 1182 (C).

#### Issue V. Family Ties

IN HAJIANI NIROUNMAND V. I.N.S 26 F.3D 832 (8TH CIR 1994) IN CONSIDERING WAIVER OF DEPORTATION BOARD OF IMMIGRATION APPEALS (B.I.A) MUST BALANCE SOCIAL AND HUMANE FACTORS PRESENTED BY THE ALIEN AGAINST ADVERSE FACTOR. IN RASDATALADI V. I.N.S 23 F.3D 1562 (9TH CIR 1994) ID 157 (25). DEFENDANT PRAYS THE WEIGHT IS FAVORABLE MORE THAN THE UNFAVORABLE AND WEIGHT EACH ONE SEPARATELY ALL IN CUMULATIVE THAT THE IMMIGRATION HONORABLE JUDGE CAN MAKE HIS PROPER DECISION IN HENRIS V. I.N.S 3 F.3D 126 (7TH CIR 1993) ID 434, 8.U.S.C. 1101(A)(26) DEFENDANT YAGUB WAS CAREFULLY ADMITTED SINCE 1963 AND NO OTHER REASON SUCH STATUS WAS TO BE CHANGE IS CONSIDERATION OF CAREFULLY RESIDENCE IN CASEN V. I.N.S 8.F.3D 703 (9TH CIR 1993) ID 703 8.U.S.C 1251(A)(1)(H) PREVENTION TO BREAK UP FAMILY COMPRISED IN PART AMERICAN CITIZENS OR CAREFULLY PERMANENT RESIDENT.



IN RASHTAPADI V. T.N.S., 23F 3D 1562 (9th Cir. 1994) ID. 157(25)

Defendant Prays the weight is favorable more than the unfavorable and weigh each one separately all in cumulative that the Immigration Honorable Judge can make his decision. IN HENRY V. I.N.S., 3F 3D 126 (7th Cir. 1993) ID 434, 8 USC 1101(a)(2) defendant YAQUB was lawfully admitted since 1963, and no other reason such status was to be changed is a consideration of lawfully residence IN CASEN V. I.N.S., 3F 3D 700 (9th Cir. 1993) ID. 703 USC 1251 (a)(1)(h) PREVENTION TO BREAK-UP FAMILIES COMPRISED IN PART AMERICAN CITIZENS OR lawfully PERMANENT RESIDENT.

ALLEN ABREU QUALIFIES FOR FAMILY TIES WAIVER OF DEPORTATION

CONSIDERATION:	<u>RELATION</u>	<u>CITIZENSHIP</u>	<u>AGE</u>
	NAME		
	ANGELICA M. ABREU	DAUGHTER	USA 13
	FELIX A. ABREU	SON	USA 11
	BRIIANY STAR ABREU	DAUGHTER	USA 4
	FELIX A. ABREU S.	FATHER	DOMINICAN 60
	ANA ABREU	SISTER	DOMINICAN 43
	FION D. ABREU	SISTER	USA 31
	ANGELA M. ABREU	SISTER	USA 28
	YNGRIS ABREU	SISTER	USA 25
	JOHANA ABREU	SISTER	USA 23
	ELIZABETH ABREU	SISTER	USA 21

ISSUE VI RE-LITIGATION of ALIENS past 2 Priors

IN ABREU, ALIEN WAS THE VICTIM OF A PLANNED ROBBERY, BECAUSE OF THE CHILDREN, THE SHOE WAS ON THE OTHER FOOT, THE ROBBERS WERE CAUGHT BY THE VICTIM (ABREU), HENCE ABREU ENDED WITH 6 MONTHS IN JAIL UPON EXTENUATING CIRCUMSTANCES TO AVOID THE CHILDREN FROM BEING HURT.

Name	Relation	Birth	Citizen	Address
Felix A. Abreu	Father	5-16-39	Dominican Republic	127 Dakota st Boston Mass 02124 Dorches
Ana P. Abreu	Mother	2-9-45	Dominican Republic	127 Dakota st Boston mass 02124 Dorches
Fior D. Abreu	Sister	5-30-72	United States	127 Dakota st Boston Mass 02124 Dorches
Angela M. Abreu	Sister	8-15-73	United States	127 Dakota st Boston Mass 02124 Dorches
Ingris Abreu	Sister	2-16-76	United States	127 Dakota st Boston Mass 02124 Dorches
Johana Abreu	Sister	1-17-77	United States	127 Dakota st Boston Mass 02124 Dorches
Elizabeth Abreu	Sister	12-19-78	United States	127 Dakota st Boston Mass 02124 Dorches
ANGELICA Abreu	Daughter	09-27-90	UNITED STATES	127, DAKOTA ST. BOSTON MASS 02124
FELIX ANTONIO Abreu	SON	05-9-92	UNITED STATES	127 DAKOTA ST. BOSTON MASS 02124
BRIANY STAR Abreu	Daughter	12-4-00	UNITED STATES	24, BARRY ST. BOSTON MASS 02124

THE SEARCH WARRANT OF POLICE CONFISCATED 1) A PORKY PIG NEW TELEPHONE, 2) A .22 CALIBER GUN BELONG TO JOSE NOVOA. ALIEN ABREU AND FAMILY ATTORNEY MRS. McCARTHY, Esq. WILL FILE HER 28 USC 2255 HABEAS CORPUS PETITION UPON DOUBLE JEOPARDY FOR THE ADMINISTRATIVE FORFEITURE UPON ABREU'S NEW TELEPHONE. ABREU, THIS PRIOR SHOULD BE DISMISSED UPON DOUBLE JEOPARDY VIOLATION OF THE FIFTH AMENDMENT.

ATTORNEY KATHLEEN McCARTHY WILL PRESENT COURT RECORDS AS TO CORRECT FIRST PRIOR HALF GUN DISTRIBUTION TO EITHER PERSONAL USE OR DISMISS THE CASE WITHIN 2 OR 3 MONTHS. BECAUSE BOTH CASES MAY BE DISPOSED, ALIEN ABREU RE-APPLIES FOR BAIL PENDING HOME STATE INS. HEARING.

#### ISSUE: III DOUBLE JEOPARDY WAIVER

WHETHER THE I.N.S. IMMIGRATION REVIEW AND THE B.I.A. ERRED IN REFUSING TO GRANT DOUBLE JEOPARDY BONE TO SECOND PUNISHMENT DEPORTATION.

#### DOUBLE JEOPARDY ISSUE.

IN U.S.C. V. 5405-C 89-23 US CURRENCY, 33 F<sup>3</sup>D 1210, 1994 56 F 341 (9th Cir 1995) THE NINTH CIRUIT REVERSED A CIVIL FORFEITURE ORDER. U.S. V. McCASLIN, NO. CR 90-0165 WD (WD Wash. filed Sept. 2, 1994) THE US DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON GRANT A DEFENDANT A 225 MOTION AND VACATED HIS CONVICTION AND SENTENCE BECAUSE THAT PUNISHMENT WAS IMPOSED AFTER HIS PROPERTY HAD BEEN FORFEITED IN A CIVIL ACTION. THEREFORE COURT ARE EITHER REVERSING THE FORFEITURE OR THE CONVICTION SO AS NOT TO VIOLATE THE DOUBLE JEOPARDY CLAUSE.

IN U.S. V. KOZIEL, 954 F. 2D 831 (2nd Cir. 1992) ID 835 ARGUES JANNER V. U.S. 973 F. 2D AT 451 THAT CONGRESS INTENDED THE DENIAL OF TRAD TO BE PART OF

The "penalty" is not synonymous with "punishment" plainly deportation is penalty. See Fong Haw Taep v. Phelan, 333 US 6, 68 S. CT. 374, 92 L. ED 433 (1948) deportation is a forfeiture for misconduct, such a forfeiture is penalty. It is a civil penalty congress' retroactive elimination in the 1990 Act of sentencing courts power to grant relief from the civil penalty of deportation does not increase the criminal penalties, and alien does not violate the ex-*re* fact clause.

See U.S. v. YACOUDIAN, 24 F.3D (1<sup>st</sup> Cir. 1994) Double Jeopardy clause applied to deportation states in YACOUDIAN ID. 10 BREED V. Jones, 421 US 519 S. CT. 1779, 49 L. ED 2D 346 (1975) that Double Jeopardy applies to criminal and deportation proceeding are civil, therefore in YACOUDIAN failed the Double Jeopardy issue. Yet in Jong Haw Taep states deportation forfeiture and also states forfeiture is a penalty, supreme court recent winning case.

In Austin v. U.S. 509 US 113 S. CT. 2801, 125 L. ED. 2D 488 (1993) and Dept of Revenue of MONTANA v. Kurth Ranch, 511 US 114 S. CT. 1947 123 L. ED 2D 767 (1994) the combine lesson of these two cases is that civil forfeiture is punishment for the purpose of the Double Jeopardy clause. defendant has been declared deportation and affirmed by the BIA Appeals Board and now awaiting deportation presently at Oakdale F.C.I. Immigration section. alien prays the instant deportation be dismissed. U.S. v. Halper, 490 US 435, 104 L ED 2D 487, 109 S CT. 1892 (1988). the supreme court concluded that forfeiture is civil punishment for Double Jeopardy purposes. Alien deportation is civil forfeiture see Kurth Ranch the supreme court held multiple punishments are barred Double Jeopardy. therefore, alien appeal should be barred from second punishment Double Jeopardy the fifth circuit has just joined Double Jeopardy attack see U.S. v. PERES, NO. 94-60738 (November 21, 1994). Also. in Kurth.

Branch the supreme court states NO SUCCESSIVE PROSECUTION AFTER CONVICTION, therefore, this DEPORTATION IS SUCCESSIVE PROSECUTION AND PUNISHMENT AND SHOULD BE BANNED BY DOUBLE TROUBLE. VIOLATION OF THE FIFTH AMENDMENT, this court should rule DEPORTATION WAIVED.

Conclusion

for all the reasons above the HONORABLE I.N.S. JUDGE SHOULD 1) GRANT BAIL PENDING HOME I.N.S HEARING 2) GRANT WAIVER OF DEPORTATION UPON DOUBLE TROUBLE 3) OR WHATEVER THE I.N.S JUDGE SEEKS FIT. SOME CASES ARE NOT WHAT THEY SEEM TO BE AS IN GUILLEN GARCIA V. I.N.S 999 F 2D 199 (7th CIR. 1993) DEFENDANT WAS ACCUSED OF ASSAULT WITH A GUN AND ATTACK ON A CITIZEN. BUT THE REAL FACT WAS HE CAME OUT OF A HOME TO SEE WHAT WAS GOING ON, THE OTHER MAN HAS THE GUN, NOT HIM, HE WAS SHOT IN THE LEG AND WOKE UP IN THE HOSPITAL, APPARENTLY A POLICE MAN SHOT HIM, SHOOTING AT THE OTHER MAN, DEFENDANT WON HIS DEPORTATION BASE ON HARDSHIP AND CIRCUMSTANCES.

God BLESS YA'LL

Ramor W. Abner

Plymouth County Correctional Facility  
26, LONG POND ROAD  
PLYMOUTH MA 02360

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE IMMIGRATION JUDGE  
OAKDALE, LOUISIANA 71463

IN THE MATTER OF )  
 )  
ABREU-Cabrera, Ramon Wilberto ) Case No. A 36 557 748  
Respondent )  
 )  
IN DEPORTATION PROCEEDINGS )

MEMORANDUM FOR RECORD

Pursuant to Respondent/~~Applicant/Attorney~~'s written request, the appeal of the Immigration Judge's order of January 30, 1996, deporting Respondent/~~Applicant~~ to Dominican Republic is hereby WITHDRAWN.

Authority: Section 3.4, 8 CFR

Dated this 14 day of March, 1996.

R. K. McHugh

Immigration Judge

ON BEHALF OF RESPONDENT:

Ramon Wilberto ABREU-Cabrera  
#05114-052  
FCI, P. O. Box 5000  
Oakdale, LA 71463

ON BEHALF OF SERVICE:

General Attorney  
Immigration & Naturalization Svc.  
P. O. Box 5095  
Oakdale, LA 71463

EXHIBITS

ONE U.S. COURT HOUSE  
COURT HOUSE WAY BOSTON MA 02110

OMB #1105-0064

## Appeal Fee Waiver Request

## APPEAL FEE WAIVER REQUEST

Ramon W. Abren

Name:

"A" Number: A 36557748

I, Ramon W. Abren, declare under penalty of perjury, pursuant to 28 U.S.C. section 1746, that I am the Applicant/Respondent in the above case and that I am unable to pay the cost of my appeal due to my poverty. I believe that my appeal is valid and I declare that the following responses concerning my financial situation are true and correct to the best of my knowledge:

Assets Expenses (including dependents)

Wages, Salary	\$ <u>2</u> /month
Other Income (business, profession, self-employment, rent payments, interest, etc.)	<u>0</u> /month
Cash	<u>0</u>
Checking or Savings account	<u>0</u>
Property (real estate, automobile, stocks, bonds, etc.)	<u>0</u>
Other Financial Support (public assistance, alimony, child support, gift, parent, spouse, other family members, etc.)	<u>0</u> /month

Housing (rent, mortgage, etc.)	\$ <u>0</u> /month
Food	<u>0</u> /month
Clothing	<u>0</u> /month
Utilities (phone, electric, gas, water, etc.)	<u>0</u> /month
Transportation	<u>0</u> /month
Debts, Liabilities	<u>0</u> /month
Other (specify)	<u>0</u> /month

Ramon W. Abren  
Signature

9/10/2004  
Date

Any submission (motion, letter, application, etc) to the court is required to contain a statement that you mailed or delivered an exact copy to the Department of Homeland Security - Litigation Unit and the date this was performed. The court will NOT accept any submission unless you:

- a] Send or deliver a copy of the submission to the Department of Homeland Security - Litigation Unit; and,
- b] Certify to the court that you sent or delivered a copy of the submission to the Department of Homeland Security - Litigation Unit and when you did.

Below is sample language we suggest you use.

### CERTIFICATE OF SERVICE

I, Ramon W. Abren, certify I have served a true copy of the within to the:

Office of THE SPECIAL ASSISTANT U.S. ATTORNEY  
Department of Homeland Security  
JFK Federal Building  
P.O. Box 8728  
Boston, Mass 02114

postage prepaid / in hand service, on this day of 9/10/, 2004.  
(Circle one)

Ramon W. Abren  
Signature

Please note: The Immigration Court is located in Room 320 of the JFK Federal Building.

DO NOT SERVE THE OFFICE OF DISTRICT COUNSEL'S COPY WITH THE  
ORIGINAL SERVED UPON THIS COURT.

DOING SO DOES NOT CONSTITUTE SERVICE TO THE  
OFFICE OF DISTRICT COUNSEL DEPARTMENT OF HOMELAND SECURITY.

THE CLERK'S OFFICE WILL NOT FORWARD DOCUMENTS